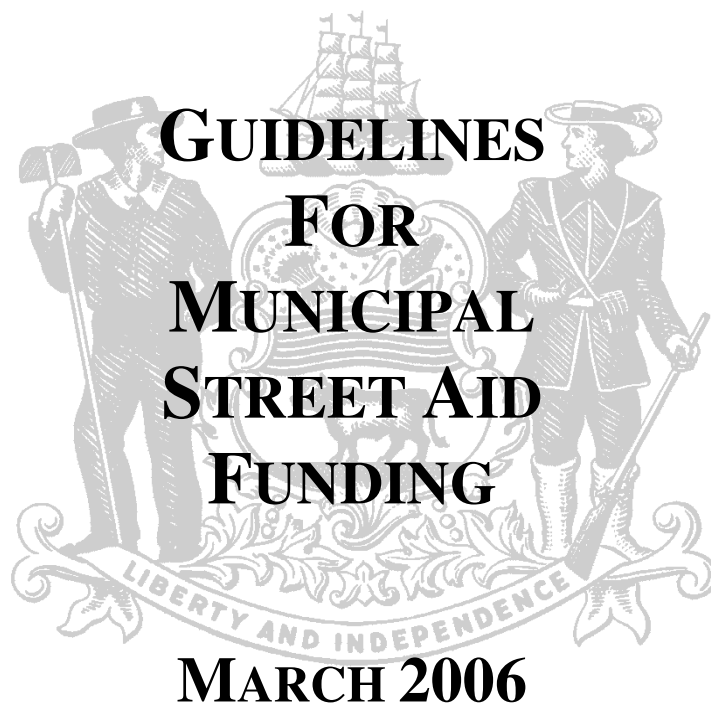
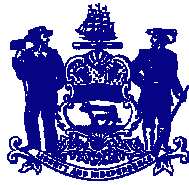


STATE OF DELAWARE
OFFICE OF
AUDITOR OF ACCOUNTS



R. THOMAS WAGNER, JR., CGFM, CFE
AUDITOR OF ACCOUNTS



STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

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Fellow Public Officials:

In order to serve the Citizens of the State of Delaware, this Office has developed what we hope is an easy-to-follow guide on administering Municipal Street Aid Funds (MSAF).

As a former Mayor, I understand the problems and questions that may arise concerning this matter. The following is a list of topics that we have addressed in our guide. I hope the discussion of these subjects will answer any questions you might have concerning this important funding of municipal services.

Municipal Street Aid Funds
Allowable Expenditures
Unallowable Expenditures
Accountability
Dates and Deadlines
Distribution of Funds
MSAF Distribution Tabulation
Delaware Code Reference to MSAF
Procurement of Material and Award of Contracts

These Guidelines For Municipal Street Aid Funding can be found on the State Auditor's web page at www.state.de.us/auditor. As always, this Office is ready to help you as we strive to make Delaware a better place to live for all citizens.

Sincerely,

OFFICE OF AUDITOR OF ACCOUNTS

R. Thomas Wagner, Jr., CGFM, CFE
Auditor of Accounts
RTW

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MUNICIPAL STREET AID FUNDS

Reference: Title 30, Delaware Code, Chapter 51, Subchapter III, Sections 5161 through 5166

State aid to municipalities for streets, known as the Municipal Street Aid Funds (MSAF) is authorized under the above legislation.

The fund, established by this legislation, is derived from a portion of the Delaware Transportation Trust Fund within the Capital Improvement Program. Annually a sum in the amount as appropriated in the annual Bond and Capital Improvements Act (Bond Bill) is distributed among the participating municipalities. Forty percent (40%) is distributed in direct proportion that the population of each municipality bears in respect to the total population of all participating municipalities. The remaining sixty percent (60%) is distributed in direct proportion that the mileage of usable streets (not maintained by the State) in each municipality bears to the total mileage of said streets in all municipalities. No distribution is made to any municipality that has existed for a period of less than one year.

For guidance in administering these funds, we have provided guidelines along with statutes that govern the Municipal Street Aid appropriation.

I. ALLOWABLE EXPENDITURES

To assist the municipalities in the expenditure of these funds, the Office of Auditor of Accounts has drafted examples of allowable expenditures under Title 30, Delaware Code, Section 5165(a)(1) and (2) as follows:

Section 5165(a)(1) – An amount not exceeding thirty percent (30%) of the annual grant may be used for the following purposes:

Water and Sewer Systems – costs incurred in the construction, installation, repair, replacement, and maintenance (i.e., painting, welding, etc.).

Urban Renewal – the preparation or revision of comprehensive plans.

Bonds – the payment of principal and interest on any bonds issued for the purpose of subsection 1, notwithstanding that such indebtedness may have been incurred prior to May 27, 1972.

Section 5165(a)(2) – Any portion of the annual grant may be expended for the following:

Salaries and Wages – incurred as a direct result of street repair, maintenance, and construction. These costs must be readily identifiable as to worker, hours and work performed.

Contracts – contractual obligations relating to street construction, reconstruction, repair, and maintenance.

Sidewalks and Under/Overpasses – costs incurred in the construction, reconstruction, or repair necessary for pedestrian safety. (NOTE: When constructing or reconstructing sidewalks and/or curbing, emphasis is placed on compliance with the “Architectural Accessibility Act” as found in Title 29, Delaware Code, Chapter 73.)

Street Improvements – to include supplies and materials such as hot mix, asphalt, slag, stone, gravel, sand, concrete, pipe for storm drain, pavement marking materials, street signs, traffic control devices, and related materials used in connection with street repair, maintenance, and construction.

Equipment – the purchase of trucks, bulldozers, street sweepers, snow plows, and related equipment utilized for street improvement and maintenance. Expenditures incurred in repairing, maintaining, or renting the above equipment are acceptable.

Rights-of-way – the purchase of rights-of-way, including the improvements and maintenance thereof.

Fund Administrator – a reasonable amount for maintenance of financial records.

Law Enforcement Essentials – patrol cars, short-wave radios, radar equipment, police uniforms, firearms, ammunition, flashers, flares, police salaries, and repair and maintenance to equipment mentioned.

Lighting – costs incurred in street and traffic control lighting. This does not include lighting of municipal buildings, and Christmas lighting.

Bonds – the payment of principal and interest on any bonds issued for street improvements.

II. UNALLOWABLE EXPENDITURES

The following are examples of expenditures that are NOT permissible in accordance with Title 30, Delaware Code, Section 5165(a)(1) and (2):

Electricity – Christmas Lights
Garbage Truck
Trash Collection
Town Hall Maintenance
Flag Pole
Flags

Fire Insurance – Town Hall
Advertising Election Notice

Loans to Town's General Accounts
Burial of electrical or telephone cables

III. ACCOUNTABILITY

The accounting records shall provide a detailed accounting of MSAF expenditures to provide an audit trail. The following financial records shall be maintained subject to audit:

1. Financial Ledgers (i.e. manual or computerized).
2. Checkbook, Canceled Checks, Bank Statements, Bank Reconciliations and Deposit Slips.
3. Bidding documents and invoices to support expenditures made.
4. Approval of expenditures and/or investments pertinent to the Fund should be recorded within the municipal minutes.
5. Withdrawals from MSAF account can only be for actual reimbursement of allowable MSAF expenses incurred after the legislative authorization has been signed into law on (July 1 annually).
6. Transfers are permitted from the MSAF account to the municipalities' general fund as a reimbursement, however, only after the payment has been executed from the other funding source. No lump sum or excess transfers shall be acceptable.
7. Interest earned on MSAF investments shall be clearly shown as redeposited or credited in the MSAF account for additional revenue or another alternative provided.
8. Annual Financial Reports as submitted to the State Treasurer's office for the period under review.
9. Evidence of bonding of municipal employees/officials authorized to expend MSAF.

IV. DATES AND DEADLINES

May 15th - On or before May 15th of each year each municipality shall file a signed affidavit with the Department of Transportation stating the population of the municipality and a tabulation of streets added during the past fiscal year which are dedicated to public use and maintained by their municipal forces.

June 30th - The Department of Transportation computes the moneys due each municipality.

July 20th (approximately) – The Department of Transportation shall provide to the Secretary of Transportation a certification as to the sum of money due each municipality.

August 15th (approximately) – The State Treasurer makes the distribution of funds to the municipalities (Reference V, page 4). Prior to any payments being made, an annual report is due to the State Treasurer from each municipality for the prior year.

October 1st – In a form prescribed by the State Treasurer, submit an accurate and complete annual report to the State Treasurer showing expenditures of MSAF for the preceding fiscal year ended June 30.

V. DISTRIBUTION OF FUNDS

The funds appropriated annually through the Bond and Capital Improvements Act for MSAF shall be distributed in accordance with the following formula: (Reference Section 5162, Title 30, Delaware Code).

<u>Grant Amount</u>	<u>Installment Payments</u>	<u>Authorization Dates</u>
\$0 - \$50,000	1	July
\$50,001 - \$200,000	2	July and January
\$200,000 - Above	4	July, October, January, and April

EXAMPLE

MUNICIPAL STREET AID FUND
DISTRIBUTION TABULATION
FISCAL YEAR 2005 (7/1/2004-6/30/2005)

July 1, 2004

TOWN	2004 POPULATION	2004 STREET MILEAGE	DISTRIBUTION BY POPULATION FACTOR	DISTRIBUTION BY MILEAGE FACTOR	TOTAL AID FY-2004	TOTAL AID FY-2005
BELLEFONTE	1,243	0.00	\$ 12,472.5105	\$ 0.0000	\$ 12,620.89	\$ 12,472.51
BETHANY BEACH	4,302	19.93	\$ 43,167.1280	\$ 99,612.6453	\$ 145,190.27	\$ 142,779.77
BETHEL	188	1.79	\$ 1,886.4296	\$ 8,946.6450	\$ 11,025.89	\$ 10,833.07
BLADES	959	4.59	\$ 9,622.7977	\$ 22,941.3970	\$ 33,085.09	\$ 32,564.19
BOWERS	417	1.76	\$ 4,184.2614	\$ 8,796.7012	\$ 13,198.26	\$ 12,980.96
BRIDGEVILLE	1,436	7.97	\$ 14,409.1111	\$ 39,835.0619	\$ 54,613.92	\$ 54,244.17
CAMDEN	2,461	8.21	\$ 24,694.1659	\$ 41,034.6120	\$ 55,190.35	\$ 65,728.78
CHESWOLD	500	0.45	\$ 6,020.5199	\$ 2,249.1566	\$ 8,384.13	\$ 8,269.68
CLAYTON	1,273	5.25	\$ 12,773.5365	\$ 26,390.1037	\$ 38,392.03	\$ 39,163.64
DAGSBORO	398	5.63	\$ 3,993.6116	\$ 18,143.1963	\$ 22,529.82	\$ 22,136.61
DELAWARE CITY	1,682	8.31	\$ 16,877.5242	\$ 41,534.4246	\$ 59,250.89	\$ 58,411.95
DELMAR	1,407	6.19	\$ 14,118.1193	\$ 30,938.3981	\$ 45,813.64	\$ 45,056.52
DEWEY BEACH	1,997	0.60	\$ 20,038.2972	\$ 2,998.8754	\$ 23,332.67	\$ 23,037.17
DOVER	33,434	91.34	\$ 335,483.4394	\$ 456,528.8017	\$ 793,847.20	\$ 792,012.24
ELLENDALE	332	3.79	\$ 3,331.3544	\$ 18,942.8964	\$ 22,674.62	\$ 22,274.25
ELSMERE	5,935	15.81	\$ 59,552.9764	\$ 79,020.3674	\$ 140,786.63	\$ 138,573.34
FARMINGTON	122	0.21	\$ 1,224.1724	\$ 1,049.6064	\$ 2,308.33	\$ 2,273.78
FELTON	933	5.29	\$ 9,361.9085	\$ 26,440.0850	\$ 35,807.66	\$ 35,801.99
FENWICK ISLAND	1,400	5.95	\$ 14,047.8799	\$ 29,738.8479	\$ 44,520.18	\$ 43,786.73
FRANKFORD	591	2.68	\$ 5,930.2121	\$ 13,394.9769	\$ 19,650.82	\$ 19,325.19
FREDERICA	761	2.21	\$ 7,636.0251	\$ 11,045.8578	\$ 18,983.08	\$ 18,681.88
GEORGETOWN	4,643	23.23	\$ 46,588.7901	\$ 116,106.4601	\$ 165,460.55	\$ 162,695.25
GREENWOOD	837	3.85	\$ 8,398.6253	\$ 19,292.7652	\$ 28,158.70	\$ 27,691.39
HARRINGTON	3,279	12.14	\$ 32,902.1415	\$ 60,677.2460	\$ 95,126.31	\$ 93,579.39
HARTLY	107	0.00	\$ 1,073.6594	\$ 0.0000	\$ 1,066.43	\$ 1,073.66
HENLOPEN ACRES	380	3.61	\$ 3,812.9950	\$ 18,043.2338	\$ 22,245.19	\$ 21,856.23
HOUSTON	487	2.09	\$ 4,886.6554	\$ 10,446.0827	\$ 15,589.80	\$ 15,332.74
KENTON	232	0.94	\$ 2,327.9344	\$ 4,898.2382	\$ 7,143.34	\$ 7,026.17
LAUREL	3,814	11.76	\$ 38,270.4384	\$ 58,777.9583	\$ 98,623.01	\$ 97,048.40
LEIPSIC	236	0.67	\$ 2,368.0712	\$ 3,348.7442	\$ 5,808.76	\$ 5,716.82
LEWES	2,932	19.63	\$ 29,420.2741	\$ 98,113.2075	\$ 129,751.88	\$ 127,533.48
LITTLE CREEK	172	0.18	\$ 1,725.8824	\$ 899.6626	\$ 2,663.21	\$ 2,625.55
MAGNOLIA	211	0.13	\$ 2,117.2162	\$ 649.7563	\$ 2,804.53	\$ 2,766.97
MIDDLETOWN	11,755	28.78	\$ 117,952.0198	\$ 143,846.0577	\$ 241,486.08	\$ 261,798.08
MILFORD	6,732	35.18	\$ 67,550.2337	\$ 175,834.0622	\$ 241,220.68	\$ 243,384.30
MILLSBORO	2,360	10.48	\$ 23,680.7118	\$ 52,380.3574	\$ 77,340.28	\$ 76,061.07
MILLVILLE	259	0.00	\$ 2,598.8578	\$ 0.0000	\$ 2,629.78	\$ 2,598.86
MILTON	1,657	9.27	\$ 16,626.6692	\$ 46,332.6253	\$ 60,015.71	\$ 62,959.29
NEW CASTLE	5,164	18.50	\$ 51,816.6083	\$ 92,465.3255	\$ 146,659.22	\$ 144,281.93
NEWARK	28,547	64.80	\$ 286,446.3045	\$ 323,878.5455	\$ 619,849.37	\$ 610,324.85
NEWPORT	1,240	4.67	\$ 12,442.4079	\$ 23,341.2470	\$ 36,376.17	\$ 35,783.65
OCEAN VIEW	1,006	19.04	\$ 10,094.4051	\$ 95,184.3134	\$ 81,062.39	\$ 105,258.72
ODESSA	285	1.91	\$ 2,869.7812	\$ 9,546.4201	\$ 12,632.14	\$ 12,416.20
REHOBOTH	6,060	18.62	\$ 60,807.2514	\$ 93,065.1006	\$ 156,368.02	\$ 153,872.35
SEAFORD	6,699	33.53	\$ 67,219.1051	\$ 167,587.1548	\$ 235,537.64	\$ 234,806.26
SELBYVILLE	1,645	9.12	\$ 16,506.2588	\$ 45,582.9064	\$ 63,153.58	\$ 62,089.17
SLAUGHTER BEACH	524	1.11	\$ 5,257.9207	\$ 5,547.9195	\$ 10,974.04	\$ 10,805.84
SMYRNA	7,666	20.98	\$ 76,922.1764	\$ 104,860.6772	\$ 175,993.25	\$ 181,782.85
SOUTH BETHANY	1,848	9.82	\$ 18,543.2014	\$ 49,081.5944	\$ 68,760.07	\$ 67,624.80
TOWNSEND	322	1.45	\$ 3,231.0124	\$ 7,247.2823	\$ 10,554.74	\$ 10,478.29
VILL. OF ARDENCROFT	282	1.01	\$ 2,829.6444	\$ 5,048.1070	\$ 8,007.55	\$ 7,877.75
VILLAGE OF ARDEN	502	3.63	\$ 5,037.1683	\$ 18,143.1963	\$ 23,585.80	\$ 23,180.36
VILLAGE OF ARDENTOWN	325	2.22	\$ 3,261.1150	\$ 11,095.8391	\$ 14,607.05	\$ 14,356.95
VIOLA	162	0.67	\$ 1,625.5404	\$ 3,348.7442	\$ 5,057.39	\$ 4,974.28
WILMINGTON	73,571	146.67	\$ 738,226.1207	\$ 733,075.0968	\$ 1,495,113.37	\$ 1,471,301.22
WOODSIDE	228	0.24	\$ 2,287.7976	\$ 1,199.5502	\$ 3,537.41	\$ 3,487.35
WYOMING	1,141	4.34	\$ 11,449.0221	\$ 21,691.8656	\$ 33,690.18	\$ 33,140.89
TOTAL	239,182	720.27	\$ 2,400,000.0000	\$ 3,600,000.0000	\$ 6,000,000.00	\$ 6,000,000.00

TOTAL MUNICIPAL POPULATION = 239,182

DISTRIBUTION RATIO = \$2,400,000.00 / 239,182 = \$ 10.034199897985600 PER CAPITA

TOTAL MUNICIPALLY MAINTAINED STREET MILEAGE = 720.27

DISTRIBUTION RATIO = \$3,600,000.00 / 720.27 = \$ 4998.125702861430000 PER MILE

DELAWARE CODE REFERENCE TO MUNICIPAL STREET AID FUNDS- TITLE 30, CHAPTER 51 (EFFECTIVE: JULY 10, 1974)

SUBCHAPTER III. STATE AID TO MUNICIPALITIES FOR STREETS

I. SECTION 5161 – DEFINITIONS

As used in this subchapter:

- “(1) ‘Municipality’ means any incorporated city or town charged with any duty connected with the construction or maintenance of streets and having been in existence for a period of 1 year.
- “(2) ‘Streets’ includes streets, highways, avenues, boulevards, bridges, tunnels, alleys or other public ways dedicated to public use and maintained for general motorized vehicular travel lying within a municipality’s corporate boundary, except that this term does not include state or federal highways within municipalities maintained by the Department of Transportation. The Department shall determine which areas are eligible for municipal street aid funds.
- “(3) ‘Street improvements’ means construction, reconstruction, repair and maintenance of streets, including paving, repaving, grading and drainage, repairs, acquisition of rights-of-way, extension and widening of existing streets, elimination of railroad grade crossings, acquisition of trucks and other equipment necessary in the construction and maintenance of streets, removal of snow and ice and the laying of materials for traction, purchase and installation of street identification signs and traffic control signs, construction, reconstruction and repair of sidewalks and underpasses and overpasses necessary for pedestrian safety, administration and other necessary expenses in connection with such street improvements, and the expenses of law enforcement for the policing of the streets, including, but not limited to, salaries, equipment, vehicles and supplies.
- “(4) ‘Municipal Street Aid Fund’ means the funds set up under this subchapter from money received under this subchapter.”

II. SECTION 5162 – APPROPRIATIONS PAID THROUGH STATE TREASURER

- “(a) There shall be appropriated annually to municipalities within the State beginning in the State’s 1998 fiscal year and each subsequent year thereafter in connection with, pursuant to, and as a portion of, the Delaware Transportation Trust Fund within the Capital Improvement Program, a sum in the amount as appropriated in the annual Bond and Capital Improvement Act. The sum so appropriated shall be transferred

to the Municipal Street Aid Fund by the State Treasurer and distributed to municipalities as provided in this subchapter.

- “(b) When deemed in full compliance with the provisions of §5165(b) of this title, the State Treasurer is authorized to process payments to municipalities in the following manner.
 - “(1) Recipients of municipal street aid whose total fiscal year share is \$50,000 or less shall receive a lump-sum distribution.
 - “(2) Recipients of municipal street aid whose total fiscal year share is greater than \$50,000 but not more than \$200,000 shall be paid in 2 equal installments, 1 in July and the other in January.
 - “(3) Recipients of municipal street aid whose total fiscal year share exceeds \$200,000 shall be paid in 4 equal installments, 1 each in July, October, January and April of each year.”

III. SECTION 5163 – TIME AND METHOD OF COMPUTATION

- “(a) The Department of Transportation shall compute annually on June 30th of each year or at the end of the state fiscal year the moneys due each participating municipality from the state Municipal Street Aid Fund. Such computation shall be based upon the share of the proceeds of the motor fuel tax imposed by this chapter and appropriated by this subchapter.
- “(b) Each annual computation by the Department shall be made as follows:
 - “(1) Forty percent of the state Municipal Street Aid Fund shall be distributed in the proportion that the population of each municipality bears to the total population of all participating municipalities. Population shall be ascertained in accordance with §5165(b)(4) of this title.
 - “(2) Sixty percent of the state Municipal Street Aid Fund shall be distributed in the proportion that the mileage of usable streets not maintained by the State in each municipality bears to the total mileage of said streets in all municipalities.
- “(c) No municipality shall be entitled to participate under this subchapter unless it has been in existence for a period of at least 1 year prior to any distribution; fractions of a year shall not be taken into consideration when distribution is made.”

**IV. SECTION 5164 – CERTIFICATION OF SECRETARY OF TRANSPORTATION;
TIME FOR PAYMENT**

“The Department of Transportation shall forward to the Secretary of Transportation within 20 days after each annual computation a certification as to the sum of money due each municipality from the State Municipal Street Aid Fund. Such certification shall be used by the Secretary to advise the State Treasurer as to distribution of the moneys as provided in this subchapter not later than 30 days from the date of receiving the certification.”

**V. SECTION 5165 – EXPENDITURES OF FUNDS BY MUNICIPALITIES;
RECORDS, AUDITS AND REGULATIONS OF MUNICIPALITIES**

“(a) Each municipality shall keep all funds received from the state municipal aid fund in a separate account, designated as ‘Municipal Street Aid Fund’ and may expend such funds as follows:

“(1) An amount not exceeding 30% of the annual grant may be used for the following purposes:

“a. Construction, installation, repair, maintenance or replacement of water and sewer systems;

“b. Preparation or revision of comprehensive plans for urban renewal;

“c. Payment of principal and interest on any bonds issued for the purpose of subdivision a. of this paragraph, notwithstanding that such indebtedness may have been incurred prior to May 27, 1972.

“(2) Any portion of the annual grant not expended pursuant to paragraph (1) of this subsection may be expended for the following purposes:

“a. Street improvements;

“b. Lighting of the streets and all expenses related thereto;

“c. Payment of principal and interest on any bonds issued for street improvements.

“(b) Each municipality shall:

- “(1) Furnish evidence annually to the State Treasurer that the municipal employees authorized to expend municipal street aid funds are bonded in an amount as may be required by the charter of the municipality;
- “(2) In a form prescribed by the State Treasurer, submit an accurate and complete annual report not later than October 1 of each year to the State Treasurer showing expenditures of municipal street aid funds for the preceding fiscal year ended June 30;
- “(3) Award contracts for street improvements which shall be in accordance with the provisions of Chapter 69 of Title 29 of the Delaware Code, and any specifications of the Department of Transportation;
- “(4) On or before May 15 of each year, file with the Department of Transportation an affidavit signed by the mayor, city manager or president of the council of the municipality, setting forth:
 - “a. The population of the municipality, based on a complete house by house and person by person census of the municipality. In the absence of this special census, the Department of Transportation will use whichever is greatest; the latest decennial census or the latest official estimate prepared by either the United States Bureau of Census or the Delaware Population Consortium. For purposes of this subchapter, the population of a municipality which is a summer resort shall be deemed to include all property owners entitled to vote in a municipal election; and
 - “b. A tabulation of streets added during the past fiscal year which are dedicated to public use and maintained by their municipal forces. Said tabulations should include street names, starting and ending points, and length in feet or miles, and be accompanied by a map indicating location of any new streets.
 - “c. Pending expenditure of funds received pursuant to §5163 of this title, a municipality may make short-term investments of such funds in United States government securities or may deposit same in any bank or savings and loan association interest-bearing accounts or certificates guaranteed by any agency of the United States government. Any interest earned on such investments or deposits shall be used for the purposes set forth in subsection (a)(2) of this section. Such investments or deposits shall not be deemed to be ‘expenditures’ of the funds as set forth in subsection (a) of this section.”

VI. SECTION 5166 – UNAUTHORIZED EXPENDITURES; PERSONAL LIABILITY

- “(a) No municipal official or employee shall authorize, direct or permit the expenditure of money from any Municipal Street Aid Fund for any purpose except those specifically authorized by this subchapter. Any municipal official or employee who violates this section shall be personally liable to the extent of the unauthorized expenditure.
- “(b) Upon report by the State Auditor of Accounts that expenditures of municipal street aid funds have been made by a municipality for purposes other than as set forth in this subchapter, the State Treasurer shall withhold all further payments of municipal street aid funds to such municipality until:
- “(1) The Attorney General or the courts of this State shall have found the disputed expenditures to have been proper;
- “(2) The municipality shall have reimbursed the municipal street aid funds to the extent of the improper expenditures; or
- “(3) The municipal official or employee responsible has made restitution to the Fund as set forth in subsection (a) of this section.”

PROCUREMENT OF MATERIAL AND AWARD OF CONTRACTS

TITLE 29, CHAPTER 69, DELAWARE CODE, FOR PUBLIC WORKS BY STATE AGENCIES, COUNTY AGENCIES AND SCHOOL DISTRICTS

I. SECTION 6901 – PURPOSE

“The purpose of this chapter is to:

- "(1) Create a more efficient procurement process to better enable the State to obtain the highest quality goods, materials and services at the best possible price, thereby maximizing the purchasing value of public monies; and
- "(2) Create a single forum in which the procurement needs of state agencies and the technical and legal requirements of the Division of Support Services are addressed simultaneously so as to increase mutual understanding, respect, trust and fair and equitable treatment for all persons who deal with the state procurement process.

II. SECTION 6902 - DEFINITIONS

“As used in this chapter:

- "(1) ‘Agency’ means every board, department, bureau, commission, person or group of persons or other authority which directly receives monies under any budget appropriation act or supplemental appropriation act and which was created and now exists or hereafter is created to:
 - "a. Execute, supervise, control and/or administer governmental functions under the laws of this State; and/or
 - "b. To perform such governmental functions under the laws of this State, or to perform such other duties as may be prescribed; and/or
 - "c. To collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or
 - "d. To administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State.

- "e. 'Agency' shall include Delaware Technical and Community College and the Delaware State University, but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this subsection shall be deemed to exempt any entity that is otherwise required to comply with §6960 of this title.
- "(2) 'Agency head' means the top official in an agency whether elected, appointed or otherwise. The agency head may delegate duties under this chapter to a designee within the agency.
- "(3) 'Agency official' means any employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards.
- "(4) 'Compensation' means the total amount paid by an agency for professional services, including reimbursed expenses, unless otherwise stated in the contract.
- "(5) 'Contractor' means any person, partnership, firm, corporation, nonprofit agency or other business association who has a contract with an agency.
- "(6) 'Covered agency' means any agency except school districts, Delaware Technical & Community College, the Delaware State University and the Legislative Branch of State government.
- "(7) 'Office' means the Office of Management and Budget; as provided in § 6960 of this title, Department' shall mean the Department of Labor.
- "(8) 'Section' means the Section of Government Support Services in the Office of Management and Budget.
- "(9) 'Electronic bid' means the bidder, in response to an advertised invitation to bid, submits all documentation, except for information and documents specified in the invitation to bid, only through an electronic process to an identified secure electronic mail account that will not be opened by the Department until the close of the bidding period. In this process, no hard copy documentation shall be submitted to the Department prior to the award of the contract.
- "(10) 'Electronic submission' means the vendor, in response to an advertised request for proposal, submits all documentation, except for information and documents specified in the request for proposal, only through an electronic process to an identified secure electronic mail account that will not be opened by the

Department until the close of the request for proposal submittal period. In this process, no hard copy, except for information and documents specified in the request for proposal, shall be submitted to the Department prior to the award of the contract.

- "(11) 'Firm' means a person, organization, partnership, limited partnership, corporation, association, nonprofit agency or other business association.
- "(12) 'Internet' means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
- "(13) 'Labor supply ratio' means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor pursuant to Chapter 2 of Title 19 or has otherwise documented 8 years of experience in a particular craft, shall be deemed a skilled crafts person for the purposes of this definition.
- "(14) 'Lifecycle costing analysis' means the contracting agency's evaluation of costs associated with the cost of acquisition, the cost of energy consumption required for operation, the cost of maintenance, and the cost of consumables that affect the state's overall cost of ownership of equipment or public works projects. Such evaluation is used by the contracting agency or project architect or project engineer for the development of contract specifications.
- "(15) 'Local government unit' means any municipality incorporated in this State under the authority of the General Assembly and any of the 3 counties.
- "(16) 'Materiel' means materials, equipment, tools, supplies, or any other personal property, but does not include real property or electric, gas, water, telephone or similar utilities.
- "(17) 'On-line bidding method' means a procurement process in which the Department receive vendors' bids for goods and nonprofessional services electronically over the Internet as either a substitute for a hard copy bid submission or in a real-time, competitive bidding event.
- "(18) 'Professional services' means services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer

information management, financial, accounting, auditing, construction management and arbitration services. Professional services subject to the provisions of § 2507 of this title or which require compliance with Delaware Supreme Court Rule 52 or a substantially similar rule of another state shall not be included in this definition and shall not be subject to this chapter.

- "(19) 'Public building' means any edifice or building which is or is to be constructed, reconstructed, altered or repaired pursuant to a public works contract. It does not mean the act or process itself of constructing, reconstructing, altering or repairing.
- "(20) 'Public funds' means funds of the State, of any agency within the State, of any public school district, of or from the United States government or of or from any department or representative body thereof.
- "(21) 'Public works contract' means construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.
- "(22) 'Reverse auctioning' means an on-line procurement method wherein bidders bid on specified goods and non-professional services through real-time electronic competitive bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are public and are revealed electronically, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the auction.
- "(23) 'Director' means, for the purposes of this chapter, the Director of the Office of Management and Budget, except as provided by § 6960 of this title, in which case it shall mean the Secretary of the Department of Labor.
- "(24) 'Third tier contractor' means a firm that has contracted with a subcontractor to provide services and/or materiel in connection with a public works contract.
- "(25) 'User Group' means 2 or more agency or non-agency representatives, one of whom shall be an agency representative who provides technical advice to the Government Support Services concerning the requirements of certain material and nonprofessional services contracts. Non-agency representatives shall be limited to expected users of the materials and/or services being procured and/or persons having technical expertise deemed necessary by the agency. In no event shall non-agency representatives be affiliated with a vendor or prospective vendor of the contract.
- "(26) 'Volunteer ambulance/rescue companies' means a volunteer ambulance or rescue company certified by the State Fire Prevention Commission.

"(27) 'Volunteer fire department' means a volunteer fire department recognized as such by the State Fire Prevention Commission.

"(28) 'Z score' means a calculation used to assess a bidder's fiscal health. The calculation is based on the following weighted ratios: return on total assets, sales to total assets, equity to debt, working capital to total assets, and retained earnings to total assets."

III. SECTION 6903 – VIOLATIONS AND PENALTIES

"(a) Any person, who, with intent to avoid compliance with this chapter, willfully fragments or subdivides any contract for the purchase of materiel, nonprofessional services, public works or professional services, shall be subject to the penalties listed in this section.

"(b) Each contract entered into by an agency for professional services shall contain a prohibition against contingency fees as follows:

"(1) The firm offering professional services swears that it has not employed or retained any company or person, working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of its employees in any professional service procurement process;

"(2) The firm offering the professional service has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement; and

"(3) For the violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

"(c) Any agency official who offers to solicit or secure, or solicits or secures, any agency or central contract and in connection therewith is paid any fee, commission, percentage, gift or any other consideration, shall be subject to the penalties listed in this section.

"(d) Any individual or firm who offers, agrees or contracts to improperly influence any agency or its employees in the procurement of any agency or central contract and who is paid or is to be paid a fee, commission, percentage, gift or any other

consideration contingent upon or resulting from the award or the making of an agency or central contract, shall be subject to the penalties listed in this section.

- "(e) Any individual or firm offering materiel and/or services which shall offer to pay to an agency official, representative or employee or is paid any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of any agency or central contract shall be subject to the penalties listed in this section.
- "(f) Except for §6960 of this title, for which the penalties and remedies enumerated in that section shall apply, any individual or firm which commits a violation of this chapter, as listed in this section, shall be punished by a fine of not less than \$1,000 and not more than \$2,000 or by imprisonment for not more than 6 months, or both, and upon a 2nd or subsequent conviction thereof, shall be punished by a fine of not less than \$2,000 and not more than \$5,000 or by imprisonment for not more than 1 year, or both. The Superior Court for the State shall have exclusive original jurisdiction over offenses listed in this section.
- "(g) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions or common law or statutory actions brought by private parties and/or the provisions and penalties defined in Chapter 58 of this title.

IV. SECTION 6904 – EXCEPTIONS

- "(a) If any provision of this chapter conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity. If any provisions of this chapter conflict or are inconsistent with Chapter 40 of Title 31, the provisions of Chapter 40 of Title 31 shall prevail and govern.
- "(b) This chapter shall not apply to any purchase of materials or services from the federal government or from the government of the State including any agency of the State, as defined in §6902 of this title.
- "(c) This chapter shall not apply to contracts for the transportation of school children. Such contracts shall be submitted to the Secretary of Education through the Department of Education Transportation Office for approval.
- "(d) This chapter shall not apply to any purchase of library materials such as books, periodicals, subscriptions and software by libraries of any agency, nor shall this

chapter apply to the purchase of services by libraries of any agency pursuant to Chapter 66 of this title.

- "(e) If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.
- "(f) Where, because of changed situations, unforeseen conditions, strikes or acts of God, a change order is determined to be necessary and is requested by the agency and not specified in the agency's solicitation or advertisement for bids and in the contract, as awarded, the awarding agency may issue a change order setting forth the change, addition or extra work required to be undertaken by the contractor on a contract, which shall not:
 - "(1) Be subject to the competitive bidding requirements of this chapter; or
 - "(2) Invalidate the contract; provided, that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the agency.
- "(g) All material required by any agency shall be purchased, except where hereinafter provided, and all work of a nonprofessional nature, except as hereinafter provided, which is not to be performed by employees of the agency shall be performed under a contract entered into pursuant to this subchapter and after competitive bidding as provided for in this section except that an agency may purchase material or contract for work to be performed without competitive bidding in the following instances:
 - "(1) When purchased material will be used by the Delaware Industries for the Blind within the Department of Health and Social Services as raw material for goods and services which the program manufactures and provides for resale or the purchased material will be used by the Business Enterprise Program of the Division for the Visually Impaired as supplies to operate the vending stands in the program;
 - "(2) When material or services are on the procurement list published by the commission for the purchase of products and services of the blind and other severely disabled individuals those material or services shall be purchased in accordance with the procedure described in §9605 of Title 16; or
 - "(3) Where the purchased material or work which is the subject of the contract is necessary to enable the Department of Natural Resources and Environmental Control to engage in the preservation of the beaches of the Atlantic Ocean

and Delaware Bay shoreline of Delaware in accordance with the Beach Preservation Act, Chapter 68 of Title 7. Notwithstanding the foregoing, any such purchase must be approved by the Budget Commission prior to the commencement of any purchase of material or work.

- "(h) This chapter shall not apply to purchases of historical artifacts or art for the purpose of public display.
- "(i) A contract may be awarded without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required contract and no other type of goods or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this subsection. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency for the sole source procurement shall be included in the agency's contract file.
- "(j) This chapter shall not apply to any purchase of educational materials and supplies by post-secondary educational institutions participating in and benefiting from special educational discount and cooperative programs.
- "(k) This chapter shall not apply to the Wilmington Housing Authority in the procurement of goods and/or services when such goods and/or services are provided by primarily Wilmington Housing Authority resident-owned businesses.
- "(l) This chapter shall not apply to the office of the Commissioner of Elections or the several departments of elections in the purchase of material or work which is subject of the contract and which is necessary to enable the Department of Elections to conduct a primary, general, special election or voter registration pursuant to Title 15."
- "(m) This chapter shall not apply to the Department of Education in the procurement of goods and/or services from the University of Delaware, Delaware State University and Delaware Technical and Community College. (70 Del. Laws, c. 601, § 4; 71 Del. Laws, c. 4, § 5; 71 Del. Laws, c. 132, § 368, 71 Del. Laws, c. 378, § 112; 73 Del. Laws, c. 310, § 23.)

V. SECTION 6905 – FAILURE TO COMPLY WITH CONTRACT; NEW AWARD; SUPERVISION

“If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency which signed the contract may terminate the contract and proceed to award a new contract in accordance

with this chapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.”

**VI. SECTION 6906 – RENTAL AND PURCHASE OF MOTOR VEHICLES;
EXCEPTIONS**

- "(a) Notwithstanding the provisions of this title, all passenger vehicles, including sedans, station wagons, passenger and utility vans, off-road vehicles, police-type cars and station wagons and trucks rated 10,000 GVW or less purchased for State use by any agency/school district must be approved by the Secretary of Administrative Services and purchased by contracts administered by the Division of Support Services. All other vehicles purchased for State use by any agency/school district must be purchased from contracts administered by the Division of Support Services.
- "(b) Notwithstanding the provisions of this title, the purchase of special purpose vehicles by any agency/school district in excess of the restrictions set forth in subsection (a) of this section, without the written approval of the Director of the Office of Management and Budget and the Controller General, is prohibited.
- "(c) Used vehicles employed by any agency for undercover operations may be purchased by negotiation rather than by competitive bidding as provided in this section, provided that the negotiated prices are approved by the Director of the Office of Management and Budget and the Controller General.
- "(d) Except for the Governor's car, cars rented while on out-of-state business and those cars leased by the Government Support Services, no agency/school district may lease passenger vehicles except from the Government Support Services.
- "(e) Passenger vehicles may not be transferred from one agency/school district to another agency/school district without the approval of the Director of the Office of Management and Budget.
- "(f) The procurement of vehicles by the New Castle County Police shall be exempt from the provisions of this section.
- "(g) The procurement of vehicles by Sussex County shall be exempt from the provisions of this section. (69 Del. Laws, c. 136, § 1; 69 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 601, § 3; 71 Del. Laws, c. 4, § 9; 73 Del. Laws, c. 143, §§ 5, 6; 75 Del. Laws, c. 88, §§ 16(5), 21(13), 22(4), 28, 29.)

VII. SECTION 6907 – EMERGENCY PROCEDURES AND CRITICAL NEED FOR PROFESSIONAL SERVICES

- "(a) An agency head may waive any or all provisions of this chapter to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property.
- "(1) Any procurement pursuant to this subsection shall be limited to those materials and/or nonprofessional services necessary to satisfy the emergency.
- "(2) Any public works project contracted pursuant to this subsection shall be subject to §6960 of this title.
- "(3) Any public works project contracted pursuant to this subsection shall be subject to §6962 (d)(4)b. of this title.
- "(4) A copy of each emergency determination processed under this procedure shall be kept on file by the agency.
- "(b) In addition to the waiver provisions provided for in subsection (a) of this section, an agency head may waive any or all provisions of subchapter V of this title to meet a critical need of the agency as required by an emergency or other condition where it is determined to be in the best interest of the agency. The agency head may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.
- "(1) Any procurement pursuant to this subsection shall be limited to those professional services necessary to satisfy the critical need.
- "(2) A copy of each critical need determination processed under this procedure shall be kept on file by the agency."

VIII. SECTION 6908 – DIVISION POWERS AND DUTIES

In addition to the powers and duties prescribed by other sections in this chapter, the Section shall:

- "(1) Review and recommend improvements to the State's procurement process;
 - "(2) Function as the contracting agent in central or joint contracting for state agencies provided, that, at a minimum, all contracts are awarded in conformance with the requirements of this chapter. The Section is required to meet or exceed the requirements of the agencies;
 - "(3) Function as a resource for state agencies by providing, on request, procurement information and or assistance;
 - "(4) Serve as a clearinghouse for procurement information for materiel and services for both agencies and vendors;
 - "(5) Promulgate rules and regulations to effect this chapter. Such rules and regulations shall be promulgated according to the Administrative Procedures Act in Chapter 101 of this title and shall be approved by the Contracting and Purchasing Advisory Council; and
 - "(6) Assume such other powers, duties and functions as the Director of the Office may assign which are not otherwise inconsistent with the laws of this State.
- "(b) The Office shall not charge any agency any fee for central contracting services. The Director of the Office may charge any agency of this State local government unit or volunteer fire departments within the State for which the Office makes purchases, supplies, contractual services or to which it distributes materiel a reasonable service charge. The Office shall deposit such charges into a special account to be used to effectuate the purposes of the Office."

IX. SECTION 6909 – SPECIAL REQUIREMENTS FOR CONTRACTS INVOLVING ENVIRONMENTAL STATUTES

"All contracts covered under this chapter shall make provisions for all federal and state anti-pollution, conservation and environmental statutes, rules and regulations and county ordinances which will be involved in the execution of the contract."

X. SECTION 6909A. LIFECYCLE COSTING ANALYSIS

- "(a) In the case of small and large public works contracts awarded under § 6961, 6962 or 6965 of this title, the contracting agency shall require the project architect or project engineer to perform lifecycle costing analysis on equipment, systems, materiel and design elements for public works projects when said equipment, systems, materiel and design elements have the potential to reduce operating, maintenance or energy costs over the useful life of the public works project. On the basis of said analysis, the project architect or the project engineer shall incorporate

in the public works contract specifications the equipment, systems, materiel, and design elements for the public works project that have the lowest total cost of ownership and operation over the useful life of the public works project. The use of lifecycle costing analysis may be waived by the agency head, in writing, if any of said equipment, systems, materiel or design elements are not appropriate for lifecycle costing analysis.

- "(b) In the case of contracts awarded under §§ 6922, 6923, 6924, 6925, 6933, 6934 and 6938 of this title, the contracting agency shall perform lifecycle costing analysis on equipment that has the potential to reduce operating, maintenance or energy costs over the useful life of the equipment. On the basis of said analysis, the contracting agency shall incorporate specifications in the contract for equipment that has the lowest total cost of ownership and operation over the useful life of the equipment. The use of lifecycle costing analysis may be waived by the agency head, in writing, if the equipment is not appropriate for lifecycle costing analysis. In the case of central contracts, and public works contracts awarded by the Office, only the Director may waive the use of lifecycle costing analysis. (74 Del. Laws, c. 419, § 4; 75 Del. Laws, c. 88, § 16(5).)"